REMARKS

Applicants have reviewed and considered the Final Office Action dated April 28, 2009, and the cited references therein. Claims 1-4, 6-11, 13, and 15 are pending in the present Application. Claims 1 and 11 have been amended to more particularly point out and distinctly claim the subject matter which Applicants regard as their invention. No new matter has been added. In view of the amendments and the following remarks, reconsideration and allowance of all pending claims are respectfully requested.

Claim Rejection Under 35 U.S.C. § 112

Claim 11 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention.

Applicants traverse this rejection for at least the following reasons. Appropriate correction has been made so that "the server" as recited in line 7 of claim 11 now has sufficient antecedent basis.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-4, 6-11, 13, 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0158777 A1 (Schiff et al.) (hereinafter "Schiff") in view of U.S. Patent No. 7,283,974 (Katz et al.) (hereinafter "Katz") and further in view of U.S. Patent No. 6,061,660 (Eggleston et al.) (hereinafter "Eggleston"). Reference was also made to U.S. Patent No. 7,181,438 (Szabo).

Applicants traverse these rejections for at least the following reasons.

Independent claims 1 and 11 are directed to a marketing system/method "that matches a customer profile to product/service offers marketed in a variety of web services resident on respective remote servers. . . ." Claims 1 and 11 comprise, in part, "a program operable to match one of the plurality of product/service offers to the customer profile . . . wherein the program is configured to allow the customer to accept or fulfill product/service offers [and] wherein the

program is further configured to update matching based on whether a product/service offer was accepted or fulfilled by the customer."

The Examiner has rejected claims 1 and 11 based in part on the assumption that the "messages" as disclosed in <u>Schiff</u> are the same as the "offers" recited in the claims. While one skilled in the might infer that a message could be an offer, claims 1 and 11 have been amended to clarify that the offer as claimed is capable of being "accepted or fulfilled." In this regard, the Examiner will kindly note that <u>Schiff</u> does not disclose that the "messages" are capable of being "accepted or fulfilled." That is to say, there is no disclosure in <u>Schiff</u>, wherein, after a message is displayed, the viewer is able to respond to said message by purchasing the products or services advertised.

The disclosure with regard to Schiff is much more limited with regard to the "messages" that are displayed. <u>Schiff</u> is capable of providing only a limited functionality akin to a television commercial or radio advertisement. <u>Schiff</u> does not explain a user's options upon viewing the message. Rather, one skilled in the art would infer that the customer must take it upon him/herself to find a means to purchase the product or service advertised if desired (i.e., by going to a retail outlet, calling the company to place an order, etc.). Thus, <u>Schiff</u> does not disclose "allow[ing] the customer to accept or fulfill product/service offers" as claimed.

Moreover, <u>Schiff</u> does not disclose the "server" as claimed. Rather, in <u>Schiff</u>, the user portfolio already includes websites, and messages from these websites are the only ones presented. "Each user generates and keeps a portfolio, which is a list of advertisers and/or other users that he wishes to receive message from." <u>Schiff</u>, para. [0083]. Thus, in <u>Schiff</u>, there is no "matching" performed by a "server," nor would there need to be any because of the set up information already provided in the user portfolio.

Neither <u>Katz</u> nor <u>Eggleston</u> remedy the aforementioned deficiencies of <u>Schiff</u>. <u>Katz</u> is directed to a system/method to "upsell" a product/service to a customer after that customer has already made a "primary contact" with the system, and therefore does not display or advertise anything to a customer unless the customer initiates contact first. The combination of <u>Schiff</u> and <u>Katz</u> would not result in a system/method capable of functioning in a manner as recited in either

claims 1 or 11. That is, there is a reason that <u>Schiff</u> does not disclose a "server" as claimed—In <u>Schiff</u>, the user profiles already have websites listed, and messages from these websites are the only ones presented and as such, no "matching" is performed, nor would it be needed due to the nature of the user portfolio. <u>Katz</u>, in contrast, does not even use "customer profiles." Rather, <u>Katz</u> discloses a system/method that gathers information based on "primary transaction data." Essentially, the disclosure in <u>Katz</u> is based on an assumption *that there is no customer profile available.* Therefore, <u>Schiff</u> and <u>Katz</u> are not properly combined under section 103(a) because one skilled in the art viewing <u>Schiff</u> would not look to a reference unrelated to customer profiles.

Furthermore, such a combination does not yield the invention as claimed because neither reference discloses "a server for executing a program operable to match one of the plurality of product/service offers to the customer profile, the customer profile comprising a permission-based marketing profile within the server, which continuously communicates through an Internet connection to scan for product/service offers that appear to match the customer profile, and provides the customer instant communication with a product/service provider" as claimed.

<u>Eggleston</u> is directed to a system/method for providing incentive programs over a computer network, and therefore does not relate to "match[ing] a customer profile to product/service offers marketed in a variety of web services resident on respective remote servers." Applicants also note that <u>Eggleston</u> was cited in support of rejection of a claim which was cancelled in Applicants' response to the previous Office Action (claim 14), and thus does not appear to have any applicability to any of the currently pending claims.

For all the foregoing reasons, Applicants respectfully submit that independent claims 1 and 11 are now in allowable form. Reconsideration and a favorable response are respectfully requested.

Official Notice

Claims 1 and 11 have been amended to *inter alia* recite certain subject matter set forth in canceled claim 21. In the Office Action, the Examiner has further suggested, with reference to the "updating" functionality of claims 1 and 11, that "adaptive intelligent applets based upon user responses are old and well known in the art." Office Action p. 11. The Examiner took

Official Notice with regard to this assertion, and also made reference to <u>Szabo</u>. Id. However, neither claim 1 nor claim 11 claim an applet per se. As currently amended, the claims are directed to a system/method "wherein the program is further configured to update matching based on whether a product/service offer was accepted or fulfilled by the customer." While the disclosure presents an applet as one embodiment, such should not be considered as limiting.

Furthermore, even with specific reference to the applet embodiment as disclosed in the specification, Applicants would respectfully submit that the applet disclosed in the present application is not of the type of applet as would have been known to one skilled in the art at the time the application was filed, and thus cannot anticipate the above-recited limitation of claims 1 and 11. While some "adaptive intelligent applets" may have been known, the Examiner has not cited to any that perform the same or similar function as the applet disclosed in the present application. <u>Szabo</u> does not remedy this deficiency. The Examiner asserts that <u>Szabo</u> discloses an applet "contain[ing] the necessary logic to directly receive information for updating its functionality." The functionality to which <u>Szabo</u> refers, however, is "Protection of Personal Profile Information," not "updat[ing] matching based on whether a product/service offer was accepted or fulfilled by the customer" as claimed. See *col. 37, ll. 44; col. 38, ll. 5-13*. The suggestion that *all* types of "updating" disclosed in the art are analogous to one another, no matter how different their respective underlying functions are, is simply improper. Thus, the Examiner has not provided sufficient support for the assertion that "updat[ing] matching based on whether a product/service offer was accepted or fulfilled by the customer" was known in the art.

Claims 2-4, 6-10, 13, and 15 depend from, and incorporate all the limitations of, either claim 1 or claim 11. Thus, for the reasons set forth above, Applicants respectfully submit that claims 2-4, 6-10, 13, and 15 stand in allowable form. Reconsideration and a favorable response are respectfully requested.

CONCLUSION

This application now stands in allowable for, and consideration and allowance are respectfully requested.

This response is being submitted on or before July 28, 2009, making this a timely response. It is believed that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

If a telephone conference would be helpful in resolving any remaining issues, please contact the undersigned at (612) 492-6867.

Respectfully submitted,

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